

REMARKS

Claims 3-12 are pending and stand rejected. By this Amendment, Applicant amends claim 4 to clarify antecedent basis, respectfully traverses the rejections and requests reconsideration.

Claim 4 has been amended to clarify antecedent basis. Claim scope has not been narrowed thereby.

The Office Action rejects claim 3 under 35 U.S.C. § 103(a) over Hutchison, IV et al., U.S. Patent No. 6,449,476, in view of Hoffman, U.S. Patent No. 6,622,017. However, the Office Action has failed to make out a prima facie case of obviousness under § 103 because the references, even if combined, fail to teach or suggest all the claim limitations. M.P.E.P. § 2143.

Independent claim 3 requires “means for copying the patch into the volatile memory to create a backup patch to be stored in the read only memory.” The Office Action states that “Hutchison teaches . . . means for copying the software features into the volatile memory to create a backup software to be stored in the read only memory (col. 3, lines 53-67; col. 4, lines 1-22).” Applicant respectfully disagrees.

Hutchison at col. 3, line 52 to col. 4, line 3 teaches instead that a wireless communication device includes one or more memory units, which may be a RAM and a programmable memory such as an EEPROM, and also teaches that portions of the RAM could be used as a shadow ROM. Applicant respectfully submits that this portion of Hutchison contains absolutely no teaching whatsoever with respect to creating a backup patch in a volatile memory.

Hutchison at column 4, lines 4-22 further teaches that the RAM can include a downloader feature to receive external software. At best, this portion of Hutchison (when combined with Hoffman) reads on the claimed “means for loading” but again contains no teaching or suggestion of the claimed copying means for creating a backup patch. Nowhere in the cited portion or anywhere else in Hutchison is there taught or suggested creating a backup patch, as expressly required by the claims of the present application.

Further, Hoffman does not cure the deficiency of Hutchison. Although Hoffman discloses using a bug patch, it does not teach or suggest creating a backup patch as discussed above and as explicitly recited in independent claim 3. Both Hutchison and Hoffman lack the disclosure of a backup patch. For the reasons given above, claim 3 is patentable over the combination of Hutchison and Hoffman under § 103 because even if combined they fail to teach or suggest all of the claim limitations. Withdrawal of the rejection of claim 3 is thus respectfully requested.

Claims 4-7 depend on independent claim 3. Reversal of the rejections of dependent claims 4-7 thus required. “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” M.P.E.P. § 2143.03, quoting In re Fine, 837 F.2d 1071 (Fed. Cir. 1988).

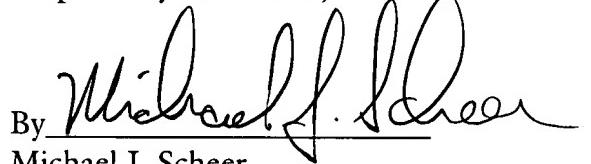
The Office Action states that independent claims 8 and 9 are rejected for “the same reason set forth in claim 1”. Claim 1 has been cancelled from the application, and so these rejections must be withdrawn. It is assumed that the Office Action is referring to the rejection of claim 3. However, like claim 3, both claims 8 and 9 require a backup patch. Claim 8 requires “means for copying the patch into the volatile memory to create a backup patch” and claim 9 requires “copying the patch into the volatile memory to create a backup patch”. For the reasons given above, then, with respect to claim 3, claims 8 and 9 are

patentable over the combination of Hutchison and Hoffman. Claims 10-12 depend on claim 9. Reversal of the rejections of dependent claims 10-12 is thus required. M.P.E.P. § 2143.03.

Applicant has shown that claims 3-12 are patentable under § 103 over the combination of Hutchison and Hoffman. In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance and such action is earnestly solicited.

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Respectfully submitted,

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